

Application No. 09/786,80
Amendment and Response
Page 6 of 9

REMARKS

Claims 26-42 are pending in the present application, and all claims were rejected in the January 27, 2003 Final Office Action. By this Amendment and Response, the specification is amended; Claims 27, 31, 32, 34, and 40 are amended; and Claims 33, 35, 41, and 42 are cancelled. Applicants respectfully request reconsideration of the present claims in view of these foregoing amendments and the following remarks.

INTERVIEW

Applicants gratefully acknowledge the interview with the Examiner on July 25, 2003 and thank the Examiner for her time and consideration of their arguments. The present rejection was discussed, but no agreement was reached. The Examiner indicated that she would reconsider the rejection.

OBJECTION TO THE SPECIFICATION

According to the January 27, 2003, Office Action, the objection to the amendment filed May 23, 2002 under 35 U.S.C. § 132 is maintained because it introduces new matter into the disclosure. The Examiner suggests (paragraph 2 of the Office Action) that the amendment be limited to diseases originally disclosed by the present specification. Applicants respectfully traverse this rejection.

Applicants submit that Table 1 does not introduce new matter. Section 2163.07(a) states as follows:

Application No. 09/780,
Amendment and Response
Page 7 of 9

By disclosing in a patent application a device that inherently performs a function or has a property, operates according to a theory or has an advantage, a patent application necessarily discloses that function, theory or advantage, even though it says nothing explicit concerning it. The application may later be amended to recite the function, theory or advantage without introducing prohibited new matter.

Applicants submit that Table 1 does not introduce new matter because it merely makes explicit an inherent function, theory or advantage. Nevertheless, in the interest of advancing prosecution of the application, applicants are canceling herewith Table 1 from the specification. Applicants are also renumbering the remaining tables in the specification. Applicants submit that the foregoing obviates the present rejection.

CLAIM REJECTIONS

Claim Rejections under 35 U.S.C. § 112, First Paragraph

The rejection to Claims 27, 32, 34, and 40-42 under 35 U.S.C. § 112, first paragraph, is maintained in the January 27, 2003 Office Action. It is the Examiner's view that these claims contain subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the art to which it pertains that Applicants had possession of the claimed invention.

By the amendments filed herein, Claims 27, 32, 34, and 40 now incorporate the material that previously appeared in dependent claims. Applicants have also cancelled Claims 41 and 42. Applicants emphasize that by including the claim feature "wherein the tumors comprise solid tumors, benign tumors, or metastatic tumors" in Claim 27, this claim

Application No. 09/780,____0
Amendment and Response
Page 8 of 9

encompasses the treatment of all tumors, such as tumors associated with leukemia, other cancers, and the like. Accordingly, this amendment does not constitute a narrowing of Claim 27. By these amendments, Applicants have obviated this rejection under 35 U.S.C. § 112, first paragraph, and respectfully, request removal of the rejection and allowance of the pending claims.

Provisional, Obviousness-Type Double Patenting Rejection

The provisional rejection of Claims 26-42 are subject to a provisional, obviousness-type double patenting rejection in view of Claims 15 and 19 of co-pending U.S. Application No. 09/899,702. Respectfully, Applicants note that Claims 15 and 19 of co-pending U.S. Application No. 09/899,702 were withdrawn from consideration as a non-elected invention in the Response to Restriction Requirement and Preliminary Amendment filed November 9, 2001. Therefore, Applicants request that this provisional rejection be withdrawn and the currently pending claims be allowed.

Conclusion

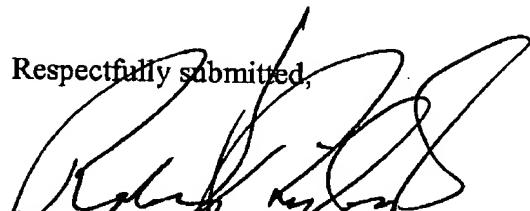
In view of the remarks and amendments entered above, Applicants submit that the claims define patentable subject matter and are in condition for allowance. A Notice of Allowance is therefore requested and such action is respectfully solicited.

If the Examiner believes that any informality remains in the application that may be corrected by Examiner's Amendment, or there are any other issues which can be resolved by telephone interview, a telephone call to the undersigned attorney at (404) 815-6500 is requested. No additional fees are believed due; however, the Commissioner is

Application No. 09/780,650
Amendment and Response
Page 9 of 9

authorized to charge any deficiencies, or credit any overpayment to deposit account No. 11-0855.

Respectfully submitted,


By: Robert E. Richards
Reg. No. 29,105

Kilpatrick Stockton LLP
Suite 2800
1100 Peachtree Street
Atlanta, GA 30309-4530
Tel. (404) 815-6500

Our File: 05213-0493 (43170-253692)